IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.599 OF 2007

M/s.Manish Techno Works,
S-18, MIDC Industrial Area,
Boisar, Tarapur, District Thane,
Through H.U.F Partner,
Shri Bharatkumar Bajranglal Poddar) ...Appellant

Versus

1. Vipul K.Shah,
   Age: 36 Years, Proprietor,
   M/s.Veer Trade,
   103/A, Baldev Sadan,
   Maharana Pratap Road,
   Bhayender (West)
   District Thane.

2. Shri S.G.Poddar,
   Age: 80 Years, Partner,
   M/s.Manish Techno Works,
   Residing at B-201,
   Country Park,
   Opposite Tata S.S.L,
   Dattapada Road,
   Borivali (East),
   Mumbai 400 006.) ...Respondents

WITH
FIRST APPEAL NO.600 OF 2007

M/s N.G.Techno Crat,
C-1/7, MIDC Industrial Area,
Boisar, Tarapur, District Thane,
Through H.U.F Partner,
Shri Bharatkumar Bajranglal Poddar) ...Appellant

Versus

1. Shri Pankaj Chhabildas Seth,
   Age: 42 years, Partner,
   M/s.Ferro Steels,
   6, Jain Bhuvan, Mathura Das Rd.
   Kandivali (West), Mumbai.

2. Shri S.G.Poddar,
   Partner,
   M/s.N.G.Techno Crat,
   Residing at B-201,
   Country Park,

Opposite Tata S.S.L,)
Dattapada Road,)
Borivali (East),)
Mumbai 400 006.) ...Respondents

Shri K.B.Sonwalkar for the Appellant in both the Appeals.

Shri Harman Singh Khalsa and Shri A.K.Saxena for the Respondent No.1 in both the Appeals.

CORAM : ABHAY S.OKA, J.

DATED : MARCH 08, 2007.

JUDGMENT:

1. Admit. Advocate for the first Respondent waives service. Service of notice to the second Respondent is dispensed with.

2. Taken up for hearing with the consent of the parties. In these Appeals, the original first Defendant has challenged money decrees passed against him in the suit filed by the first Respondent.

3. The submission of the learned Advocate for the Appellant is that though the Appellant and the second Respondent filed written statement, at the time of recording of evidence, the Advocate appearing for the Appellant and the second Defendant did not remain present. He pointed out that therefore, the witnesses examined by the first Respondent have not been cross-examined and the Appellant and the second

Respondent have not led any evidence. He submitted that in First Appeal No.599 of 2007 the Appellant is ready and willing to deposit with the trial Court a sum of Rs.2,50,000/- without prejudice to the rights and contentions of the parties within a period of three months from today. He states in First Appeal No.600 of 2007 the Appellant is ready and willing to deposit with the trial Court a sum of Rs.2,60,000/- without prejudice to the rights and contentions of the parties within a period of three months. He stated that the Appellant is prepared to pay a reasonable amount by way of costs to the first Respondent. He submits that an opportunity may be granted to the Appellant to defend the suit by cross-examining the witnesses of the first Respondent and by leading evidence. The learned Advocate appearing for the first Respondent opposed the submissions made by the learned Advocate appearing for the Appellant. The learned Advocate however submitted that if this Court is inclined to remand the suits for trial, a time bound schedule may be fixed and the first Respondent may be permitted to withdraw the amounts deposited by the Appellant.

4. I have considered the submissions. It is obvious that the Appellant and the second Respondent have not contested the suit by cross-examining the witnesses of the first Respondent and by leading

evidence. The reason being the absence of their Advocate. The Appellant has offered to deposit substantial amounts and has also offered to pay a reasonable amount by way of costs. Considering the said offer made by the Appellants, in my view, one opportunity deserves to be granted to the Appellant to defend the suit. The prejudice which will caused to the first Respondent can be minimised by ordering payment of costs and by permitting the first Respondent to withdraw the amounts deposited by the Appellant with the trial Court subject to furnishing security to the satisfaction of the trial Court. A time bound schedule will have to be fixed for disposal of the suit.

5. Hence, I pass the following order:

FIRST APPEAL NO.599 OF 2007

(i) The impugned Judgment and Decree dated 28th June, 2006 passed by the learned IInd Adhoc Additional District Judge, Palghar in Special Civil Suit No.73 of 2001 shall stand set aside subject to condition of the Appellant depositing with the trial Court a sum of Rs.2,50,000/- on or before 08th June, 2007. If the entire amount is not deposited within the stipulated period, the impugned Judgment and Decree will stand and

it will forthwith become executable.

(ii) If the amount as aforesaid is deposited by the Appellant with the trial Court within the stipulated time, the first Respondent-Plaintiff will be entitled to withdraw the said amount subject to furnishing adequate security for the said amount to the satisfaction of the trial Court.

(iii) The Appellant shall pay costs of Rs.7,500/- to the first Respondent. The Advocate for the Appellant has handed over a cheque in the sum of Rs.7,500/- drawn in favour of the first Respondent to the Advocate for the first Respondent in the Court. The Advocate for the Appellant assures that the cheque shall be honoured.

(iv) The Appellant will be entitled to apply for recalling the witnesses examined by the first Respondent for cross-examination. The first Respondent will be entitled to lead additional evidence. The Appellant will be entitled to lead evidence. The trial Court will decide the suit as expeditiously as possible and preferably on or before 31st January, 2008.

(v) The Appeal is partly allowed in above terms. The trial Court to act upon an authenticated copy of this order.

FIRST APPEAL NO.600 OF 2007

(i) The impugned Judgment and Decree dated 28th June, 2006 passed by the IInd Adhoc Additional District Judge, Palghar in Special Civil Suit No.66 of 2001 shall stand set aside subject to condition of the Appellant depositing with the trial Court a sum of Rs.2,60,000/- on or before 08th June, 2007. If the entire amount is not deposited within the stipulated period, the impugned Judgment and Decree will stand and it will forthwith become executable.

(ii) If the amount as aforesaid is deposited by the Appellant with the trial Court within the stipulated time, the first Respondent-Plaintiff will be entitled to withdraw the said amount subject to furnishing adequate security for the said amount to the satisfaction of the trial Court.

(iii) The Appellant shall pay costs of Rs.7,500/- to the first Respondent. The Advocate for the Appellant has handed over a cheque in the sum of Rs.7,500/- drawn in favour of the first Respondent to the Advocate for the first Respondent in the Court. The Advocate for the Appellant assures that the cheque shall be honoured.

(iv) The Appellant will be entitled to apply for recalling the witnesses examined by the first Respondent for cross-examination. The first Respondent will be entitled to lead additional evidence. The Appellant will be entitled to lead evidence. The trial Court will decide the suit as expeditiously as possible and preferably on or before 31st January, 2008.

(v) The Appeal is partly allowed in above terms. The trial Court to act upon an authenticated copy of this order.

JUDGE